

**Webinar Call of the Secretarial Commission on Indian Trust Administration and Reform
November 7, 2012
Meeting Summary v1**

The Secretarial Commission on Indian Trust Administration and Reform held a public webinar on November 7, 2012. Commission Chair Fawn Sharp chaired the webinar. Sarah Palmer, U.S. Institute for Environmental Conflict Resolution (USIECR) facilitated the meeting and Bridget Radcliff, USIECR, took notes. Approximately 99 members of the public participated in the webinar. The webinar attendees are listed in Appendix A. The webinar agenda and list of materials discussed during the webinar are in Appendix B.

Welcome, Introductions, Agenda Review

Chair Sharp welcomed everyone and thanked the Commissioners for their participation. Commissioners Robert Anderson and Peterson Zah were on the call and introduced themselves to the webinar attendees. Commissioner Leeds sent her regrets for a last minute emergency. The Chair noted that Commissioners have had a busy six weeks with many public engagements and updating one another will be helpful. The Chair Sharp then reviewed the agenda and objectives for the meeting. The meeting objectives were:

- Attend to Commission operations as needed and report on outreach activities.
- Review and discuss revised draft documents to-date and take public comment on the drafts.
- Review and discuss agenda for December 6-7 Commission meeting.

Commission DFO Lizzie Marsters greeted the Commission and reiterated that their work is a priority for the Secretary of the Interior and that they are excited to continue their work with the Commission on this important topic.

Trust Commission Operations

Chair Sharp reported that since the September Commission meeting in Bismarck, the Commission subcommittee had one call in October and three calls in November. Additionally the Commission has had two administrative calls, one in October and a second in November. Bridget Radcliff, USIECR updated the Commission on the status of the September meeting summary, a draft will be circulated for their review at the end of the week (November 9) and that the revised draft will be included in the Commission read-ahead materials for the December 6-7 Commission meeting. (Note: Once approved the summary will be posted to the Commission public website.)

Commissioner Zah noted that he had not yet received his hard copy materials for today's call.

Commissioner Outreach Activities Since September

Chair Sharp attended the United South and Eastern Tribes (USET) annual meeting to share with the tribal leadership in the eastern seaboard the progress of the Commission. She also spoke briefly at the Indian Land Consolidation Symposium as well as NCAI about the Commission's work as it relates to the secretarial order, charge and expectations of the Department. She also alerted people about the two

draft documents: the draft statement of trust responsibility and the draft conflict of interest protocols. Chair Sharp encouraged tribal leaders to be part of formulating deliverables.

Commissioner Zah attended NCAI in Sacramento. The sessions interesting and he learned a lot about other activities going on with tribal leaders around the country. Commissioner Zah was particularly interested in the land consolidation and land restoration workshop hosted by Chickasaw Nation. In that session the project director described several tribes that participated in land consolidation program, sharing some of the successes as well as the pitfalls experienced by the tribes. Commissioner Zah noted that he and Commissioner Anderson have raised the question of why land consolidation never really worked in Indian Country the way it was anticipated. The workshop at NCAI detailed the challenges that will be faced by the Commission as DOI begins working on land consolidation. Commissioner Zah offered to discuss the successes and pitfall in more detail if of interest to Commission. On Monday, November 12 Commissioner Zah will be at University of New Mexico to meeting with students. The students are interested in the work of the Commission and what is happening now.

Commissioner Anderson was in the Seattle area in October and spent a day and a half with the State of Washington tribes. He talked with tribal chairs and other attendees about Commission work. He has also had several individual conversations with tribal attorneys about work of Commission. On November 8 Commissioner Anderson is hosting a conference at Harvard Law School with tribal court judges and tribal court administration. Commissioner Anderson reported that he has been participating in series of meetings with the Richard Nixon Legacy Foundation and Indian Policy Issues. He noted that there is an event next week at the National Museum of the Indian. Commissioner Anderson encouraged Commissioner to read the 1970 document from Nixon that outlined good thinking about trust responsibility and conflicts of interest and office of trust counsel. (NOTE: USIECR distributed this document to the Commission and DOI members after the webinar.)

Regina Gilbert of the DOI Regulatory Affairs and Collaborative Action (RACA) in the Assistant Secretary for Indian Affairs attended the National Indian Education Association Annual conference. She reported that approximately 40-50 people attended. Ms. Gilbert used the Commission power point presentation to describe the work of the Commission and emphasized the Commission's interest in hearing from youth as a part of their hearings. The Haskill Indian Nation asked if one or more Commissioners could attend their mid-April Empowerment Summit.

Ms. Palmer, USIECR briefly reviewed the Commission outreach calendar noting that Commissioner Leeds with Helen Riggs, DOI-OST is attending the BIA Providers Conference in Alaska at the end of November. In addition Commissioner Leeds is conducting an outreach session in December in Oklahoma and may also attend the Intertribal Agricultural Council meeting in December.

Review and Discussion of Commission Draft Documents to-date

Chair Sharp introduced the agenda topic noting that the Commission is working on two drafts in response to input from public at previous Commission meetings and as result of speakers before past meetings. At the September Commission meeting the drafts were discussed again and before the Commission today are two update drafts to discuss. Once Commissioners review and discuss the webinar participants will have an opportunity to comment on-line or by phone.

Draft Federal Trust Responsibility Statement

Commissioner Anderson received lots of feedback from the public at the September Commission meeting in Bismarck and the draft on screen today incorporates that feedback while not making the statement too long. Commissioner Anderson spoke to some of the key revisions (see his redline document included in the meeting read aheads).

On page 1:

Adding the context about how federal law incorporates international law concepts, racist views as well as ultimately the recognition of indigenous rights to sovereignty and property.

Adding that the access to natural resources as one of the several important elements in the tribal-colonial US relations and treaty negotiations.

Commissioner Anderson noted that he received several comments about making clear that individual allotments and Indians had relationship based on individual assets. Page 1 now includes language recognizing allotment era policies and impacts.

At the bottom of page 1 and top of page 2 is quotation about general trust principles and the importance of history and treaty making taken from Cohen Handbook of Federal Indian Law. Noting specifically that even though the US stopped entering into treaties in 1871 subsequent statutes and executive orders are “treaty substitutes” and subject to same rules of interpretation and tribal interest that treaties enjoy.

Top of page 3 in the bulleted list added ‘water’ as a tribal trust asset. Other concepts suggested over the last few months have also been incorporated.

On page 4 the additional text is to better align with the language in the draft conflicts of interest protocols. The US has a high responsibility in the area of conflicts of interest. The document that was revealed from the Nixon archives served as the basis for the self-determination message that President Nixon sent to Congress in response to Blue Lake set on course of modern self-determination. This section added on page 4 of the draft is straight out of memorandum. Note in this excerpt the language *“Every trustee has a legal obligation to advance the interests of the beneficiaries of the trust without reservation and with the highest degree of diligence and skill.”*

The revised draft poses the question of whether the Office of Trust Counsel put forth in 1970 should be reconsidered to establish a means to put forth Indian interests when there is a conflict of interest. This merits serious consideration.

Commissioner Anderson reminded everyone that the Commission needs to think about what Commissioner Zah has mentioned repeatedly to incorporate and reflect the views of our forefathers and ancestors who have signed treaties and what their understandings were.

Commissioner Anderson concluded saying that the draft statement will continue to be work in progress. He will continue to improve it and it can be the basis to develop specific recommendations on trust counsel, protocols, and tie in the specific questions from Deputy Secretary Hayes regarding the on-the-ground activities. He added that as the Commission receives comments and ideas about the statement the Commission will work on the draft statement to make improvements. The comments received to date have helped the Commission make progress and have been very helpful.

Commissioner Zah reiterated that it was very helpful to receive comments from tribal leaders, especially from the Navajo Nation President and how he feels the Commission should address the definition of trust responsibility. Commissioner Zah continued that hearing the NCAI work sessions and the process of educating tribal members about the role of government in Indian nation relations. The participants in those sessions were interested in the same thing that the Commission is discussing: 'What was the thinking of Indian people years ago and how/what did they understand trust responsibility to mean?' Commissioner Zah shared that in present day we hear what federal judges say and the rulings they make. And we are missing this other part where Indian tribes are a party and what was their understanding? He expressed his interest in hearing those comments and discussing these issues with those individuals. Commissioner Zah appreciated the work of Commissioner Leeds and Anderson to bring these important ideas forward.

Public Comments and Questions about the Draft Statement

Allotment

- Arthur Fisher (DOI-BIA): Is the "allotment process" still ongoing anywhere?
- Commissioner Anderson: The forced allotment was ended in 1934 and individuals may sell allotments if they want to ask the Secretary to approve sale or transfer or take lands into trust. He will add a sentence to the draft to make this clear in statement.
- Judge Sally Willet (retired): The Alaska Natives Veterans have allotting process that is ongoing. The 1934 IRA prohibition aimed only at IRA tribes. Not really a completely closed door yet. [Ms. Willet submitted a paper for the Commission regarding allotment. See Appendix C].

Moral Obligations

- Dan Rey-Bear (Nordhaus Law Firm): Regarding the draft trust responsibility principles he recommends deleting references to moral obligations since the Supreme Court has determined that moral is unenforceable. Any reference to guardian/ward merely supports trust responsibility. See the recent NCAI resolution calling for reform legislation and establishing a permanent Indian oversight commission. The Indian Trust Counsel Authority has come up extensively in follow-up conversation with Congress and legislation was introduced. It was not adopted because tribal advocates recognized that the DOI would use as an excuse to abdicate the Departments' own fiduciary responsibility to tribes. The DOI, the Assistant Secretary not necessary because DOI knows of trust responsibility issues and problems reinforced by IG. Navajo Nation believes that these issues can be best addressed through establishment of permanent Indian Oversight Commission that would be by tribes and individual allottees that the DOI and DOJ fulfill fiduciary responsibility to Indians.
- Commissioner Zah: Thank you and the firm for what you are doing. These should be the key elements of the statement.

Scope of Natural Resources

- Valerie Olaizola (DOI-OST): Although tribal input is important, please consider obtaining input from individual tribal members. Also, I did not see wind under natural resources listed in the draft. Would that be added considering the solar wind leases that are being developed?
- Juliett Pittman (Self-Governance Communication and Education): Does reference to Land and Water always include Natural Resources as a matter of reference or should natural resources always be included where land and water is referenced.
- Commissioner Anderson: Good points. I will try to be consistent and comprehensive.

UN Materials

- Dr. Rudolph Ryser (Center for World Indigenous Studies): Will the Trust Study consider the findings of the United Nations Special Rapporteur (Miguel Alfonso Martinez) in his study "Study on treaties, agreements and other constructive arrangements between States and indigenous populations" produced by the UN Economic and Social Council in 1999?
- Commissioner Anderson: We will look at that.

Commissioner Anderson wrapped up the discussion expressing his appreciation for all of the comments. He is trying to keep the statement concise enough that someone would want to read it. Any specific implementation such as proposed legislation will come from other papers that are created in consultation with Indian community. Commissioner Anderson underscored that he is not viewing the draft as a litigation document but don't want to include anything that would undermine any tribe.

Commissioner Review of Draft Conflict of Interest Protocols

Sarah Palmer, facilitator, set context about the protocols, that they were first introduced at Commission meeting in Bismarck (September 2012). The feedback there was to make the draft document broader to focus on variety of conflicts of interest rather than those just in litigation. Commissioner Anderson stated that the draft is a good conflict of interest set of protocols. The Commission needs to hear from people in light of NCAI resolution and other comments received. Once we have that input we then need to determine the degree of specificity we want to get into these recommendations in terms of overall enforcement of responsibility.

Public Comments Regarding the Draft Conflict of Interest Protocols

- Patricia Marks, (Attorney with Ute Tribe): Often times when considering conflicts of interest in departmental administration looking in the context of legal terms. What often plays out is money. When dealing with water settlements and trust settlement the US has obligation to protect treasury. When times are tight the discussion of payments and support becomes an issue. The US is always going to be concerned with its own treasury. Very evident in confines of tribal trust settlement when US unwilling to speak about specific damages. Very clear conflict of interest. Need to remind people of.
- Commissioner Anderson: I think that Jeanne Whiteing talked about conflicts of interest in context of water rights settlement and how to capture and address. I will figure out a way to address as a problem and try to think of a solution.
- Judge Sally Willett (Ret.): Cherokee Nation v. Leavitt addresses the general point of money vs. legal requirements under contracts and conventions.
- Valerie Olaizola (DOI-OST): In terms of a contract, it is difficult for the US Government to be impartial (in terms of conflict of interest). It would be advisable to refer to the UNDRIP for guidance.

Other Public Comments

- Thomas John (Chickasaw Nation Industries): What is the Commission's website URL?
- Tom Schlosser (MSJS): Is the statement from David Hayes available?
- Sarah Palmer (USIECR): Yes, it is posted in the Commission website:
<http://www.doi.gov/cobell/commission/index.cfm>, under September meeting material as "•Letter to the Commission Chair - Priorities from DOI"

Chair Sharp thanked all for their comments and reiterated that the Commission welcomes recommendations on how to broaden its outreach to all groups.

NCAI and GPTCA Resolutions

Chair Sharp directed the Commission's attention to the Resolution of the Great Plains Tribal Chairman's Association (GPTCA) regarding the 'return of functions of the Office of the Special Trustee, to the Bureau of Indian Affairs...as appropriate return funding to BIA Regional and Agency levels for trust services now carried out by the Office of Special Trustee'. The recent NCAI conference resulted in several resolutions. Resolution regarding Trust Asset Reform Legislation was shared with Commissioners before today's webinar. These resolutions have direct linkages to the Commission's work and important for the Commission to be aware of and familiar with the documents.

Commissioner Zah responded that he has copies of the resolution and read them and would like a little more time to ask some questions and have conversations with other people regarding proposition to move from within one corner of the DOI to another. Need to look at quality of work involved and make that kind of judgment. He needs to study a little more before he can begin to recommend how this should be handled. Commissioner Anderson concurred. Adding that it is really helpful to have the resolutions to know what people are thinking. The Commission needs to have a discussion about these issues and think and study these.

DFO Marsters stated that it is important, as a federal employee, to understand the failure and to improve the relationship with tribal nations. Very curious about what was the impetus for suggesting the resolution and what are the interim solutions? Commissioner Zah responded that he was thinking the same thing and that he needs to know the 'whys' before he can honestly say that something will be improved by large change. Commissioner Anderson agreed with Commissioner Zah, stating that he thinks the management consultant will look at the underlying problems that have led to the resolutions from NCAI and GPCTA and will address the substantive problems.

Public Comments and Questions Regarding the Resolutions

- John Dossett (NCAI): Thank you for considering the NCAI resolution. It came up at the recent annual meeting and lots of discussion about it. Mr. Rey-Bear was primary drafter and lots of collective work. There is quite a bit of context on dealing with OST and hope there is some point when we (NCAI) can talk about. For the Commission to really understand the issues it may make sense for the Commission to do on the ground reservation visits. This will really illustrate the difficulties trying to work with two different offices (OST and BIA) at the ground level. People acknowledge good things from OST and there are some difficulties with two different decision-making processes for one set of issues. The Commission needs to talk about context and visit tribes on ground-level to discuss.
- Dan Rey-Bear (Nordhaus Law Firm): If helpful, the OST part of the NCAI resolution was adapted from a resolution submitted by Tex Hall.

Commission discussion and further thoughts regarding priority areas from the September 6 letter from DOI for further work by the Commission

Chair Sharp asked the Commissioners if they have any further thoughts about work they want to undertake based on the Deputy Secretary's letter. Commissioner Anderson responded that the Commission is learning more about how services and fiduciary obligations being carried out. The Commission has a lot of different balls in the air and need time to discuss at the December work session. The Commission is gathering information and talking with people about substantive issues. Don't want to rush this; want to get the consultant on board and discuss further.

Commissioner Zah responded that the Commission has an extra half-day to discuss this in December. If Commissioners have a semi-agreement in mind before we begin to make any kind of recommendation. It will take some time and require some inquiries to some of the principals who are operating these programs. The Commission needs to revisit the letter and begin to have dialogue in terms of what we are thinking before making any kind of suggestions. He would like to reserve any of this until the Commission has taken these steps. He supported a half-day meeting of the Commission while in Seattle.

Overview of December 6-7 Meeting and Related Youth Outreach Session

Sarah Palmer provided an overview of the draft meeting agenda. She noted that the December meeting will be available online and by phone. As Commissioners Zah and Anderson mentioned earlier in the webinar the Commission will have a working session on December 5. Youth outreach is important to the Commission particularly to hear from the next generation of leaders in Indian country and engage youth. Pat Gerard and Helen Riggs from OST have been working to set up a youth outreach session on the evening of December 6. They are also exploring ways to link the session to youth at UTTC.

Chair Sharp reported that the Commission is finalizing speakers for the meeting. The speakers are identified by Commissioners as well as members of the public who participate on webinars such as this one. Still being finalized are the speakers for probate, real estate panel on Dec 6. Currently have representatives from Confederated Salish and Kootenai (CSKT), Yakama and Nez Perce. The Commission wants to hear from tribes who compact or contract their real estate or probate services in order to hear what works well and where there are challenges.

The Chair noted that there is one 30 minute slot available on December 6 in the natural resources panel because the Intertribal Agricultural Council had a scheduling conflict. The other speakers for the session are John Gordon and Billy Frank Jr. Chair Sharpe asked Commissioners how the thirty minute time slot should be used identifying the following options:

1. Add another speaker regarding another natural resource asset.
2. Increase the amount of time available to each of the two panelists.
3. Increase the lunch break
4. Reallocate the 30 minutes for a speaker about international trust models.

Commissioner Anderson asked if an international trust models speaker has been proposed? Adding that getting a speaker for this area would be good use of time.

Mark Davis (DOI-OST) cautioned the Commission to really consider that there is enough time for thoughtful presentation and meaningful dialogue and input from speakers and the public

Sarah Palmer reported that the speakers for trust reform panel on December 7 are confirmed, invite letters being sent by Lizzie Marsters. Mr. Tommy Thompson speaking about BIA budget on December 7.

Public Comments Regarding the December Meeting

- Patricia Marks (attorney for Ute Tribe): I would like to strongly encourage someone from the Commission to attend the December meeting of the TBAC. Established by DOI to have two representatives from US. One of the biggest issues in TBAC is the OST. Considerable amount of money involved in ongoing function of the organization. TBAC has traditionally called for major revamp of that expenditure. Every time the idea of cutting back on scope of services comes up it is

noted that is under the purview of the Commission. As budgets tighten down there is concern centered around other functions like appraisals. Critical for the Commission and TBAC to begin communicating soon. Budget is a very real concern. This is something, a balancing act, respect to do things thoroughly. People are going to be making decisions about money very soon.

- DFO Marsters: Very fortunate to have Chairman Hall who attends the TBAC meetings on the Commission. Tommy Thompson asked to give presentation to Commission to address some of these issues as well.

Commission Meeting Schedule

- Patricia Marks (attorney for Ute Tribe): Important that Chairman Hall is member of the TBAC group. One of his concerns is that for other members of the Commission involved with flow of dollars from Administration to tribes it would be important to understand the function of this as well. Encouraged by TBAC to invite all of you.
- Chair Sharp: At last session the Commission talked about joint session with TBAC. Trying to figure out how we might be able to convene that session. Structural and organizational issues that relate to policy issues. We have a number of significant policy and monetary issues in play that will impact Commission decisions.
- Commissioner Zah: I want to thank the caller for what she has stated. I would ask that the TBAC meeting dates and places be emailed to the Commission and maybe there are some that have time to attend some of those sessions. The Commission is confronted with a lot of budget limitations. It is important that we hear some of those situations before we make any decisions. Thank you for sharing and making us aware of other Indian tribes and what they face and budgetary constraints we all have to face.

Additional Suggestions for Speakers

- Judge Sally Willett (Ret.) and John Dossett (NCAI): Recommend Sharon Redthunder with 40 years of realty experience an expert in fee to trust.
- Commissioner Zah: The Commission is always looking for advice from thoughtful presentations and appreciate engagement of public in the discussion of the Commission.

Action Items and Reminders

Bridget Radcliff, USIECR reviewed the following action items from today’s webinar.

Action Items	Who
Hear more about lessons learned re land consolidation summarized by Chickasaw Nation	Commissioner Zah, Commissioners
Distribute Nixon memo to commission	Sarah - Completed
Discuss how to get best info from tribes re challenges working with OST and BIA such as on the ground site visits	Commissioners
TBAC send their meeting dates to Commission	Patricia Marks to Sarah
Consider future joint meeting with TBAC	Commissioners
Finalize speakers for December meeting	Commissioners
- Consider speakers suggested by public during todays webinar	
Reminder: Subcommittee calls Nov 15 and 28	Commissioners, DOI, USIECR

Appendix A. Trust Commission Webinar Participants

Category code: T= tribal representative, O= tribal organization, M= media, G= federal government representative, E= University affiliation.

Commission Members	
Robert Anderson	Commissioner
Fawn Sharp	Chair
Peterson Zah	Commissioner
Lizzie Marsters	Designated Federal Official
Facilitation Team	
Sarah Palmer	USIECR
Bridget Radcliff	USIECR
ITC DOI Support Staff	
Mark Davis	OST
Charles Evans	OST
Regina Gilbert	AS-IA/RACA
Bryan Rice	BIA
Helen Riggs	OST
Bodie Shaw	BIA
Tiffany Taylor	OST, AS-IA

Members of the Public			
Name	Affiliation	Category	City, State
Berrey, John	Quapaw Tribe	T	Quapaw, OK
Bioff, John	Kawerak, Inc.	T	Nome, AK
Boley, Dawn	Quinault Tribe	T	Rochester, WA
Brown, Ed	Nez Perce Tribe	T	Lapwai, ID
Campbell, James	Makah Tribe, Forestry	T	Neah Bay, WA
Cook, Shalee	Muscogee (Creek) Nation	T	Okmulgee, OK
Gill, Dustina	Sisseton-Wahpeto Oyate	T	Sisseton, SD
Henry, Jolene	Pyramid Lake Paiute Tribe	T	Nixon, NV
Hill, Clifton	Makah Tribe	T	Neah Bay, WA
Huddell, Bonnie	Native Village of Barrow	T	Barrow, AK
John, Thomas	Chickasaw Nation	T	Ada, OK
Kenney, Brett	Coquille Tribe	T	North Bend, OR
Kookesh, Melissa	CCTHITA	T	Juneau, AK
Larsen, Eric	Kawerak, Inc.	T	Nome, AK
Lewis, Kareen	Little River Band of Ottawa Indians	T	Manistee, MI
Malerba, Lynn	Mohegan Tribe	T	Uncasville, CT
Marks, Patricia	Ute Tribe	T	Washington, DC
McLaughlin, Jennifer	Jamestown Sklallam Tribe	T	Charlotte, NC
Merhalski, Daniel	Wampanoag Tribe	T	Aquinnah, MA

Oberly, Yvonne	Skokomish Tribe	T	Skokomish, WA
Peters, Raymond	Squaxin Island Tribe	T	Shelton, WA
Smartlowit, Raymond	Yakama Nation	T	Toppenish, WA
Starling, Meghan	Sault Ste. Marie Tribe of Chippewa Indians	T	Chesapeake, VA
Suppah, Ronald	Confederated Tribes of Warm Springs	T	Warm Springs, OR
Wall McDonald, Teresa	Confederated Salish and Kootenai Tribes	T	Pablo, MT
Watts, Daniel	Nez Perce Tribe	T	Lapwai, ID
Weaver, Robert	Quapaw Tribe	T	Joplin, MO
Abe, George	Abe Consulting LLC	O	Rio Rancho, NM
Alderete, Marie	Chickasaw Nation Industries	O	Albuquerque, NM
Atcity, Shenan	Holland & Knight LLP	O	Washington, DC
Athens, Sue Anne	Chickasaw Nation Industries	O	Albuquerque, NM
Baker-Shenk, Philip	Holland & Knight LLP	O	Washington, DC
Beckwith, Terry	ICC Indian Enterprises	O	Las Vegas, NV
Betancourt, Robert	Indian Voices	O	Hemet, CA
Bird bear, Theodora	land owners association	O	Mandaree, ND
Caggiano, Joe	Cohn Reznick	O	Bethesda, MD
Crespin, Sarah	Chickasaw Nation Industries	O	Albuquerque, NM
Dossett, John	NCAI	O	Portland, OR
Gandhi, Debu	George Waters Consulting	O	Washington, DC
Giles, Marcella	ILWG	O	McLean, VA
Hicks, Charlotte	Upper Mohawk, Inc.	O	Titusville, FL
Imotichey, Jessica	Chickasaw Nation	O	Washington, DC
Kaviratne, Chet	Chickasaw Nation Industries	O	Albuquerque, NM
Kingman, A. Gay	GPTCA	O	Rapid City, SD
Logan, Vince	The Nations Group	O	New York, NY
Lolar, Kyle	Penobscot Nation Teen Center	O	Indian Island, ME
Martin, Aurene	Spirit Rock Consulting	O	Alexandria, VA
Moorehead, Paul	Drinker Biddle & Reath	O	Washington, DC
Nelson, Diddy	OKC Area Inter-Tribal Health Board	O	Oklahoma City, OK
Odom, Candace	CMO DESIGNS	O	Lakeland, FL
Pittman, C Juliet	Self-Governance Communication and Education	O	Washington, DC
Rey-Bear, Daniel	Nordhaus Law Firm	O	Albuquerque, NM
Ryser, Dr. Rudolph	Center for World Indigenous Studies	O	Olympia, WA
Schlosser, Tom	MSJS	O	Seattle, WA

Seaforth, Natasha	SENSE Incorporated	O	Washington, DC
Smith, Kyle	RedWind Group	O	Houston, TX
Sucher, Scott	Keres Consulting	O	Albuquerque, NM
Swimmer, Ross	Swimmer Group, LLC	O	Tulsa, OK
Victor, Beverly	CohnReznick	O	Bethesda, MD
Wiles, Jessica	Hobbs Straus Dean and Walker	O	Portland, OR
Willett (Ret.), Judge Sally	Indian Land Working Group	O	Phoenix, AZ
Capriccioso, Rob	Indian Country Today	M	Washington, DC
Cottier, Allene	Indigenous World Association	M	Bloomington, IN
Krehbiel-Burton, Lenzy	Native American Times	M	Tulsa, OK
Rickert, Levi	Native News Network	M	Grand Rapids, MI
Baker, Rhonda	DOI-OST	G	Albuquerque, NM
Begay, Arlene	DOI-OST	G	Albuquerque, NM
Denison, Linda	DOI-OST	G	Wellpinit, WA
Dettling, Teresa	DOI-OST -OTR	G	Portland, OR
Devlin, Michael	DOI-OST	G	Palm Springs, CA
DuMontier, Deb	DOI-OST	G	Washington, DC
Dykstra, Liz	DOI-OST	G	Billings, MT
Fisher, Arthur	DOI-BIA	G	Siletz, OR
Gilbert, Regina	DOI-AS-IA RACA	G	Albuquerque, NM
Hamley, Jeffrey	DOI-BIE	G	Albuquerque, NM
Heger, Roger	DOI-OST	G	Bemidji, MN
Henry, Cecelia	DOI-OST	G	Sacaton, AZ
Hight, Evonne	DOI-OST	G	Albuquerque, NM
Hutchinson, Margie	DOI-OST	G	Nespelem, WA
Jones, Marianne	DOI-OST	G	Everett, WA
Kelly, Jacquelyn	DOI-BIA	G	Billings, MT
Morris, Ginger	DOI-OST	G	Billings, MT
Olaizola, Valerie	DOI-OST	G	Lapwai, ID
Parker, Phil	federal employee	G	Glendale, AZ
Rodman, Anthony	DOI-OST	G	Washington, DC
Rugen, Catherine	DOI-OST	G	Albuquerque, NM
Verlanic, Lynnette	DOI-OST	G	Lame Deer MT
Walhovd, Brenda	DOI-BIA (land consolidation program)	G	Ashland, WI
Webb, Stan	DOI-BIA	G	Phoenix, AZ
Jourdain, Wendy	UTTC Student	E	Bismarck, ND
Parker, Alan	Evergreen State College	E	Olympia, WA
Thomas, Janet	UTTC	E	Bismarck, ND

Appendix C. Webinar Agenda and List of Documents Referenced**Webinar Call of the Secretarial Commission on Indian Trust Administration and Reform****November 7, 2012**2.00 pm-4.00 pm Eastern / 1.00 pm-3.00 pm Central /
12.00 pm-2.00 pm Mountain / 11.00 am-1.00 pm Pacific**Phone:** 888-957-9823
Public Access Code: 3204235

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Please register in advance of the call. You will be asked to provide your name, title, phone and email address in order to register.

Objectives

- Attend to Commission operations as needed and report on outreach activities.
- Review and discuss revised draft documents to-date and take public comment on the drafts.
- Review and discuss agenda for December 6-7 Commission meeting.

Agenda (Times listed in Pacific)11:00 – 11:05 Welcome, Introductions, Agenda Review –Chair Sharp

- Brief explanation of how public comments will work on webinar.

11:05 – 11:20 Trust Commission Operations - Commissioners

- Updates on Action Items (such as meeting summary, subcommittee activities) - DOI, Commissioners, US Institute for ECR
- Commissioner Reports on Outreach during October and Anticipated Outreach in November and December – Commissioners
Sharing of key themes heard during these events.
See: “Commission Meeting and Outreach Calendar Updated 10-2-12”

11:20 – 11:50 Review and Discussion of Commission Draft Documents to-date

- DRAFT Federal trust responsibility statement
- DRAFT Protocols for Conflict of Interest and Standards of Conduct
- Commission discussion and further thoughts regarding priority areas from the September 6 letter from DOI for further work by the Commission.

11:50 – 12:30 Public Comment

12:30 – 12:45 Overview of December 6-7 Meeting and Related Youth Outreach Session
See: "ITC Dec Agenda DRAFT V4 11-01-12"

12:45 – 12:50 Review action items from today's discussion –Bridget Radcliff, US Institute for ECR

12:50 – 1:00 Adjourn –Chair Sharp

Materials in addition to this agenda that will be available to the public after the webinar:

- **Commission Meeting and Outreach Calendar Updated 10-2-12**
- **United States Trust Responsibility 2nd Draft 11-1-12**
- **ITC conflict of interest protocols Draft v2 9 x12**
- **ITC DOI draft letter 9-6-12**
- **2012-10 NCAI SAC-12-023 Trust Reform Legislation**
- **GPTCA Reso calling for return of Special Trustee functions to BIA 8-23-2012**
- **ITC Dec Agenda DRAFT V4 11-01-12**

Appendix C. Statement submitted by Judge Sally Willett (retired)

The following was submitted after the Commissioner webinar.

WHY REFORM OF ALLOTTED LANDS FAILS

Judge Sally Willett (Ret.)

Allotted land reform fails because those who participate in the formulation and drafting process principally have no specialized technical knowledge about or experience in administering what they are addressing and those who do are pressured to subordinate their acumen to the politics of the moment.

Without participation of technically-proficient landowner representatives with undiluted focus on the Interior Department's recently established trust commission, as strongly urged by counsel for *Cobell* plaintiffs at the October 2011 Indian Land Working Group Land Consolidation Symposium, the sins of past alleged reform initiatives—that were in fact indiscriminate allotment eradication measures—will be revisited and further litigation by aggrieved allotted landowners is guaranteed.

Since the early '80s, fractionation and probate reform initiatives have been for the primary benefit of the government, its coffers and its litigation strategy against allotted landowners. Bones have been thrown to tribes but only as incidental beneficiaries. Both have benefited, temporarily, at the expense of allotted landowners whose 5th amendment protected property rights have been sacrificed on the alter of expediency. Trust reform of allotted lands has also thrown the baby out with the wash with off-reservation allotments slated to go into fee status in probate as rapidly as possible capitalizing on AIPRA's unconscionably narrow definition of Indian. One-fifth of the remaining allotted land base is imperiled by such maneuvers. Allotments constitute one-fifth of the full trust and restricted Indian land base.

Allotted landowners have won one hundred percent of the cases filed in opposition to principal reform vehicles. *Hodel v. Irving*, 481 U.S. 704 (1987), and *Youpee v. Babbitt*, 519 U.S. 234 (1987). The absence of highly technically-skilled landowner representatives on the new trust commission guarantees more avoidable legal and technical defects to come. Defects trigger either litigation or require technical amendments. Either outcome presents serious obstacles to orderly administration of allotments.

Technical amendments cause legislative implementation to be segmented because different versions of law apply during particular periods. Tracking discrete periods complicates adjudicative, administrative, recordation and distributive duties. The fourteen-year *Hodel-Youpee* litigation era was a nightmare plagued by executive and administrative directives and stays for which particularized monitoring was required. As of this writing—fifteen years after the last 2% case was decided by the Supreme Court—Interior has still not completed modifying 2% estates. An ounce of prevention is always worth a pound of cure. Do it once, do it right.

Indian probate is one of the most technically-complicated subspecialties within the broader realm of Indian law, yet it is treated with astonishing superficiality. It is a subject matter characterized by rigid rules and narrow exceptions. Playing fast and loose in probate is irresponsible. ILCA's 2% rules and AIPRA's forced sale of *heirs'* less than 5% interests represent triumphs of politics over law and reason.

The problems described in the preceding paragraphs would not have existed had ILCA drafters heeded technically grounded warnings in the early 1980s from probate experts or had DOI and Senate Indian Affairs Committee staff communicated with technical experts rather than proceeding with furtive efforts to authorize invalid forced sale of *heirs'* interests. Quick probate fixes are illusory. AIPRA drafters, did not think to "shepardize" [look up] 25 U.S.C. § 2206 case law. Had they done so, they would have soon found a Supreme Court decision that specifically addressed heirs' unenforceable interests. See *Hodel v. Irving*, *supra*, at 711, citing *Irving v. Clark's*, 758 F. 2d 1260, 1267-1268, (8th Cir., 1985) extensive discussion of heirs in estates.

The comments made in this piece are not intended to malign or criticize any single person or entity. They are intended to point out an historical flaw in reform processes. Owners of allotted lands want trust reform to be done correctly and also to be involved in reform development processes for real not for show. Allotted landowners, their representatives and advocates are not anti-tribe; they are pro-fundamental fairness and due process of law which they have not received in the formulation of trust reform measures from the early 1980s to date. Due process has been obtained by landowners only through costly, prolonged litigation. Litigation is not an appropriate drive train for technically-competent or effective allotted land reform.